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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,915	09/12/2003	Kevin Damewood	SMCY-P01-103	7338
28120	7590	09/22/2005	EXAMINER	
FISH & NEAVE IP GROUP ROPES & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			SINGH, SUNIL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,915

Applicant(s)

DAMEWOOD, KEVIN

Examiner

Sunil Singh

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 4, 21, 22, 25, 26 and 32-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-20, 23, 24 and 27-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "640" has been used to designate both cover and mattress see page 14 of specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

Art Unit: 3673

by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-3, 5-7, 9-11, 23-24 and 27 are rejected under 35 U.S.C. 102(e) or (a) as being anticipated by Dewert (US 2002/0152552).

Dewert '552 discloses an adjustable mattress (see Fig. 6-8, members (64,68,56,4)) comprising a first section (6,8,10,12,14) and a second section (6,8,10,12,14), the first section and the second section moveable relative to each other and together forming at least a portion of a sleeping surface of the adjustable mattress; and a first mechanical drive unit (48,50, see paragraph [0049]-[0053] within the adjustable mattress (see Fig. 6), the first mechanical drive unit connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section.

One or more additional sections (12,14), each additional section forming a portion of the sleeping surface of the adjustable mattress, and each additional section moveable relative to at least one of the first section, the second section, or another one of the one or more additional sections (6,8,10,12,14). One or more padding layer (56). Hinges (see Fig. 1). Foam core (62,68,56).

Art Unit: 3673

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 5,6,7,9,10,11,12-17,18-20, 23-24, 27-31 are rejected under 35

U.S.C. 103(a) as being unpatentable over Dewert '922 in view of Dewert '552

The figures 1-6 of Dewert '922 disclose the invention substantially as claimed.

However, Dewert '922 is silent about his adjustable supporting device being enclosed by mattress means. Dewert '522 teaches to enclose an adjustable supporting device by mattress means (see Figs. 6-8, (64,68,56)). It would have been considered obvious to one of ordinary skill in the art to modify Dewert '922 by enclosing his adjustable supporting device by a mattress means as taught by Dewert '552 since such a modification allows for a thinner adjustable bed to be constructed. Furthermore, it is aesthetically pleasing.

With regards to claims 12-17, 31, Dewert is silent about the controller being wireless and programmable. Controllers that are wireless and programmable are old and well known in the art. It would have been considered obvious to one of ordinary skill in the art to modify Dewert to include a wireless programmable controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

Art Unit: 3673

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dewert '992 in view of Dewert '552 as applied to claim s above, and further in view of applicant's admission of prior art (see page 8 of specification).

Dewert '992 (once modified) discloses the invention substantially as claimed. However, the (once modified) Dewert '992 is silent about the mattress being on a foundation. As correctly stated, applicant admits placing a mattress on a foundation is well known and old in the art. It would have been considered obvious to one of ordinary skill in the art to further modify the (once modified) Dewert '992 by placing the mattress on a conventional foundation since this is typical.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dewert '552 in view of applicant's admission of prior art (see page 8 of specification).

Dewert '552 discloses the invention substantially as claimed. However, Dewert '552 is silent about the mattress being on a foundation. As correctly stated, applicant admits placing a mattress on a foundation is well known and old in the art. It would have been considered obvious to one of ordinary skill in the art to modify Dewert '552 by placing the mattress on a conventional foundation since this is typical.

8. Claims 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewert '552

Dewert '552 discloses the invention substantially as claimed. However, Dewert is silent about the controller being wireless and programmable. Controllers that are wireless

Art Unit: 3673

and programmable are old and well known in the art. It would have been considered obvious to one of ordinary skill in the art to modify Dewert to include a wireless programmable controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

9. Claims 18-20, 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewert '552 in view of Reeder et al. (US 6460209)

Dewert '552 discloses the invention substantially as claimed. However, Dewert is silent about the first mechanical drive unit comprising a DC motor, worm gear and linkage arms. Reeder et al. discloses mechanical drive units comprising a DC motor, worm gear and linkage arms are conventional (see col. 14 lines 50+). It would have been considered obvious to one of ordinary skill in the art to modify Dewert by substituting the drive unit as taught by Reeder et al. as being well known and old in the art for the drive unit disclosed by Dewert since it is an obvious design choice to substitute equivalent parts for performing equivalent functions.

With regards to claim 31, it would have been considered obvious to one of ordinary skill in the art to modify Dewert to include a wireless controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

Response to Arguments

10. Applicant's arguments filed 6/20/05 have been fully considered but they are not persuasive. Applicant argues that Dewert '552 does not teach a mechanical drive within

Art Unit: 3673

a mattress. It should be noted that the examiner is considering Fig. 7 as the "mattress". The mattress includes members (64,68,56,4). Therefore, the mattress includes a mechanical drive (48,50), which is part of member (4). Applicant argues that member (4) is not part of mattress (68). The examiner would like to point out to applicant that the mattress is considered as members (64,68,56,4) and not solely member (68) as applicant is suggesting. The examiner would like to direct applicant to US Patent (6106576) wherein it teaches a wireless programmable controller (50). In the previous office action, examiner incorrectly cited col. 4 line 50+ for the teaching of worm gear and the like; the correct citation is col. 14 line 50+.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3673

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh
Primary Examiner
Art Unit 3673



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9/15/05